

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

JOHN WAYNE AUSTIN	§	
v.	§	CIVIL ACTION NO. 6:16cv594
TEXAS DEPARTMENT OF CRIMINAL JUSTICE, ET AL.	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE  
AND ENTERING FINAL JUDGMENT

This lawsuit was severed out of a larger civil action and was referred by the Court to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges. The Magistrate Judge directed the Plaintiff to file an amended complaint and to pay the statutory filing fee or seek leave to proceed *in forma pauperis*, but the Plaintiff did not comply with these orders. Instead, a response was filed by another prisoner, Joe Salinas Estrada. This response refers to the Magistrate Judge as an “intruder” and argues that the Magistrate Judge lacks jurisdiction in the case, the orders to amend the complaint and seek leave to proceed *in forma pauperis* are unlawful, the case should proceed as a class action, and he, Estrada, is “lead plaintiff.”

After review of the record, the Magistrate Judge issued a Report recommending that the lawsuit be dismissed without prejudice for failure to prosecute or to obey an order of the Court. The Magistrate Judge observed in this Report that records do not show Estrada is an attorney licensed in the Eastern District of Texas. Nor is he a party to this lawsuit.

A copy of this Report was sent to the Plaintiff at his last known address, return receipt requested, but no objections have been received from the Plaintiff John Wayne Austin. Estrada filed purported objections, but because he is not a party to the lawsuit nor a licensed attorney representing

a party to the lawsuit, he cannot file pleadings in the case. *See* Fed. R. Civ. P. 11(a). Because Austin did not file objections, he is barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law.") It is accordingly

**ORDERED** that the Report of the Magistrate Judge (docket no. 5) is **ADOPTED** as the opinion of the District Court. It is further

**ORDERED** that the purported objections filed by Joe Salinas Estrada (docket no. 7) are **STRICKEN** from the docket as improperly filed. It is further

**ORDERED** that the above-styled civil action is **DISMISSED WITHOUT PREJUDICE** for failure to prosecute or to obey an order of the Court. Finally, it is

**ORDERED** that any and all motions which may be pending in this action are hereby **DENIED**.

**So Ordered and Signed**

Jan 22, 2018



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Ron Clark, United States District Judge